No. 22583

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES E. MINTON,

Appellant,

v.

WILBUR J. COHEN, Secretary of
Health, Education and Welfare,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRIEF FOR THE APPELLEE

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I N D E X

C I T A T I O N S

Cases:

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JURISDICTIONAL STATEMENT

This action was instituted by the appellant ("claimant") in the district court on November 9, 1966, pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), to review the final decision of the Secretary of Health, Education and Welfare denying him a period of disability and disability insurance benefits (R. 1-2). [1/] The district court granted the Secretary's

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1/ Since this action was first instituted, Secretary Gardner has left office. Wilbur J. Cohen, the new Secretary, is therefore

motion for summary judgment on the ground that the administrative decision was supported by substantial evidence (R. 53-55).

This Court has jurisdiction of the appeal under 28 U.S.C. 1291.

STATEMENT OF THE CASE

Administrative Proceedings

Claimant, Charles E. Minton, first filed an application for a period of disability and disability benefits pursuant to Sections 216(i) and 223 of the Social Security Act, 42 U.S.C. 416(i) and 423, on January 20, 1961 (Tr. 267-270). [2/] In that application he stated that he was born in 1913 and he alleged disability from 1958, at age 45, because of "Complications from Broken Back". That application was denied initially on June 24, 1961 (Tr. 271) and on reconsideration on September 20, 1961 (Tr. 273). While claimant was advised of his right to request a hearing on his claim within six months of the denial of his claim on reconsideration (Tr. 274), his request for a hearing was made on September 7, 1962 (Tr. 47) and was therefore dismissed (Tr. 44).

On September 7, 1962, claimant filed a second application for Social Security benefits (Tr. 275). He again alleged disabili from 1958, asserting that his impairments were back trouble and

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2/ The reference "Tr." is to the administrative transcript which has been filed as part of the record on appeal.

lipped disc in neck. That application was denied initially on arch 28, 1963 (Tr. 279), and on reconsideration on May 15, 1963 Tr. 282). On May 21, 1963, claimant requested a hearing (Tr. 43), hich was held before a hearing examiner on September 10, 1963 Tr. 48-136). The hearing examiner denied claimant relief under is 1962 application [3] and declined to reopen his 1961 applica-ion because the new medical evidence did not justify a finding f "good cause" for reopening (Tr. 369). The Appeals Council ranted claimant's request for review and remanded the matter o a hearing examiner for a further hearing on both applications or benefits (Tr. 373-374). [4]

A second hearing was held on October 30, 1964, before a ifferent hearing examiner (Tr. 137-262). On April 30, 1965, he hearing examiner issued his decision in which he determined hat claimant was not disabled within the meaning of the Act uring the period of his insured status which expired on March 31, 961 (Tr. 17-32). The Appeals Council granted claimant's request or review. After obtaining further evidence, and after considering

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/ The denial of relief under the 1962 application was based n a determination that claimant's insured status expired prior o the last month for which the application was effective. The enial did not relate the merits of the claim.

/ With respect to the 1962 application the Appeals Council eversed the hearing examiner's determination as to the date of he expiration of claimant's insured status and also ordered onsideration of the 1961 application.

the effect of the 1965 amendments to the Act on claimant's application (Tr. 5-10), [5/] the Appeals Council supplemented the hearing examiner's decision and affirmed it (Tr. 9-10).

Medical Evidence

The medical evidence in this case relates primarily to claimant's back impairments. Claimant first injured his back in 1956 when he tripped and fell at work (Tr. 94). He re-injured his back in 1958 when he was putting timber on a scaffold (Tr. 20

On July 17, 1959 and on October 6, 1959, claimant was examin by a group of doctors in behalf of the Claims Department of the Industrial Commission of Arizona. The report of July 17, 1959 (Tr. 317-319) indicated that claimant walked without much difficulty, and that he could extend both legs, arching his back without much discomfort. There was slight atrophy of the left leg. The report states "He has some subjective complaints during all maneuvers of the sciatic stretch tests today. There i other objective finding of disability." The report concludes by stating that claimant should be seen again for final evaluatio but "[i]n the meantime, it would be our opinion that this man should be released for light work as of the present time."

5/ The 1965 amendments changed the requirement that an impairme to be disabling, had to be "of long continued and indefinite duration", and substituted instead the requirement that the impairment "has lasted or can be expected to last for a continuou period of not less than 12 months . . .". P. L. 89-97, Section 303(a)(1), 79 Stat. at 366.

The report of the group consultation of October 5, 1959 (Tr. 323-334) summarizes previous examinations and reports. Those reports set forth the view that claimant's subjective complaints were not substantiated by any organic findings (5-8-59, Tr. 325), and that there was no evidence of intraspinal pathology (5-19-59, Tr. 325). Earlier a diagnosis of acute tenderness of the lumbosacral spine had been made (12-16-58, Tr. 323).

With respect to the examination of October 5, 1959, the doctors reported that claimant walked haltingly, dragging his left leg. The limp disappeared, however, later in the examination (Tr. 331). Claimant's forward bending was carried out reasonably well, but backward bending was slightly limited by lumbosacral pain. Claimant climbed onto the table easily and appeared to lie comfortably in the supine position. The doctors reported an area of acute tenderness well localized, at the lumbosacral region. The psychiatric examination revealed no gross disorder of thinking. Claimant was "in good contact with the situation" (Tr. 333). The report concludes by noting that a myelogram was negative, that claimant had no psychiatric disability attributable to his accident, and that claimant had a 10% general physical disability as a result of his back injuries.

On April 17, 1962, claimant was seen again in group consultation and the consultants found no evidence of new and additional disability to justify reopening claimant's case (Tr. 351-353). 6/

6/ The Industrial Commission of the State of Arizona, on July 27, 1962, found that claimant had a 10% general functional disability

The report of Dr. Sitler (Tr. 344-346), dated May 23, 1961, states that claimant has two ruptured discs, [7] and is "permanently and totally disabled" unless he should undergo surgery. Dr. Sitler indicated that claimant might be able to work if he could be trained in bench work. Despite this report, Dr. Sitler apparently concurred in the group consultation of April 17 1962, finding no new disability (Tr. 353).

Other medical reports indicate, inter alia, that claimant has a degenerated disc and should be considered for rehabilitatic for sedentary work (Tr. 346), and that claimant suffers from torticollis [8] chronic, mild (Tr. 339).

In 1966, Dr. Hoffman reported and his report was before the Appeals Council (Tr. 388-392). Dr. Hoffman believed that claimant had multiple problems and he would not rule out a

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7/ In accord with this diagnosis is the earlier report of Dr. Callopy, dated August 20, 1957 (Tr. 382).

8/ Torticollis is "a contracted state of the cervical muscles, producing twisting of the neck and an unnatural position of the head." Dorland's Illustrated Medical Dictionary, 23rd Ed., p. 89
Claimant suffered a neck injury in 1945 while in service (Tr. 194) and receives VA compensation for the disabilities resulting therefrom (Tr. 19). As late as April 6, 1966 it appeared that a slipped disc in the neck was not likely but that arthritic changes most likely accounted for claimant's neck problem (Tr. 392).

mbar disc. He also suspected a chronic brain syndrome. X-rays viewed by Dr. Hoffman (Tr. 394) indicated osteoarthritic changes the spine, a tilt of the cervical spine, but no definite idences of fracture. There was an increase in angulation of e lumbosacral angle. Dr. Hoffman also believed there was a tary type of scoliosis (curvature) and some narrowing of the sc spaces. In concluding his discussion of the X-rays Dr. Hoffman id: "It must once again be emphasized that this patient is ry unreliable, due to background and education, and that only jective evidences will be of any service" (Tr. 394).

Vocational Evidence

Claimant left school at the age of 10 to work in his father's op which handled carpentry, blacksmithing, and welding. At ifteen, claimant took over the shop (Tr. 162). Before his ntry into service in 1945 claimant engaged in carpentry, ground evelling, sewing potato sacks, and various other kinds of work Tr. 166-177). In the Army, claimant taught tool sharpening nd tool dressing, and supervised use of construction equipment Tr. 189-193). After completion of his military service claimant orked primarily in carpentry until he stopped working in 1958 Tr. 196).

While claimant's formal education is only through the ourth grade, he is able to do arithmetic, read blueprints Tr. 72), and has had supervisory responsibility both in and ut of service (Tr. 74, 189-193, 166).

A vocational expert testified at the hearing that, based on the medical evidence and claimant's work experience, he concluded that claimant could be a timekeeper, time checker, telephone order clerk, and dispatcher (Tr. 230). Those jobs existed in the economy of the United States, the State of Arizona, and the Phoenix area (Tr. 231). After listening to claimant, the expert believed he could also be a consultant in a lumber yard store and an estimator (Tr. 233). These jobs he stated existed in the economy of the United States and Arizona (Tr. 233). The expert also testified that claimant could repair violins (Tr. 241 and claimant testified he had experience with violins (Tr. 251-252).

Claimant for his part asserts that he is in constant pain and "can't hold up for more than a little while" (Tr. 245).

Administrative Decisions

The hearing examiner concluded that claimant was not disable at any time during his period of insurance, which expired March 3 1961 (Tr. 17-32). The hearing examiner reviewed all of the medica evidence before him and determined that the objective medical findings, i.e., orthopedic and neurological testing, failed to show any "significantly severe underlying pathological condition" (Tr. 29). In view of claimant's ability and occupational attainments the hearing examiner concluded that he had skills readily transferable to light work. Thus, the hearing examiner ruled that claimant was not disabled under the Act.

The Appeals Council, after taking further evidence, upplemented the hearing examiner's decision and found specifically hat claimant could have engaged in the light jobs suggested y the vocational expert, viz. timekeeper, time checker, telephone rder clerk, dispatcher, and various bench-type jobs including nstrument repair.[9/] The Appeals Council further found that laimant suffered from no psychiatric impairment sufficient to e disabling on or before March 31, 1961. Finally, the Appeals ouncil determined that claimant was not eligible for benefits nder the 1965 amendments to the Social Security Act (Tr. 5-10).

As thus supplemented, the hearing examiner's decision was ffirmed. The Appeals Council's decision was rendered on eptember 9, 1966 and was the final decision of the Secretary. 0 C.F.R. 404.951.

District Court Proceedings

Claimant filed suit in the district court on November 9, 966, to review the Secretary's denial of benefits.[10/]

/ The Appeals Council acknowledged that claimant has some ower neck and back impairments from degenerative osteoarthritic hanges of a mild degree. But the Appeals Council did not elieve that claimant's neck and back impairments precluded him rom engaging in light work as of March 31, 1961.

0/ Under 42 U.S.C. 405(g) claimant was required to file his uit within 60 days of the Secretary's decision, and his suit iled on November 9, 1966 was untimely. Initially the Secretary oved to dismiss for lack of jurisdiction (R. 6), but subse- uently the Appeals Council extended the time within which suit ould be filed to November 9, 1966, the date suit was filed (Tr. 2). he action thereupon proceeded on the merits.

By order dated October 23, 1967, the district court granted the Secretary's motion for summary judgment, concluding that his decision was supported by substantial evidence (R. 53). Judgment was accordingly entered for the Secretary on October 26, 1967 (R. 54). This appeal followed (R. 59).

STATUTES INVOLVED

The relevant provisions of the Social Security Act, 42 U.S.C. 401 et seq., are reproduced in the appendix, infra, pp. 1a-3a.

SUMMARY OF ARGUMENT

The question presented for review in a Social Security Act case is whether the Secretary's determination is supported by substantial evidence. The findings of the Secretary, including the inferences drawn therefrom and the resolution of evidentiary conflicts, must be affirmed if supported by the evidence.

The legal standards to be applied in disability determination have been clarified by the Social Security Amendments of 1967, P. L. 90-248. Those amendments direct that a finding of disabilit must be based on objective medical evidence. They also direct that in determining that a claimant is unable to engage in any substantial gainful activity, it need be shown not only that he is unable to resume his former work, but also that he is unable to do any other kind of substantial work which exists in the national economy. There is no requirement that such substantial work be available in claimant's local community, nor need there be a showing that claimant would actually be hired for such work.

Under the requirements of the disability provisions of the ocial Security Act, it is clear that the Secretary's determination that claimant was not disabled is supported by substantial vidence. The Secretary properly found from the objective edical evidence that claimant had residual physical capacity o engage in light work. There is ample evidentiary support or the finding that claimant could perform the light jobs isted by the vocational expert, which jobs exist in the national conomy and in the state of Arizona.

ARGUMENT

SUBSTANTIAL EVIDENCE SUPPORTS THE SECRETARY'S DETERMINATION THAT CLAIMANT WAS NOT DISABLED WITHIN THE MEANING OF THE SOCIAL SECURITY ACT.

1. The Standard of Review.

Pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), the "findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive" [11/]. Thus this Court has noted that the question presented for review in these cases is a "narrow one", Mark v. Celebrezze, 348 F. 2d 289, 292 (C.A. 9), and the Secretary's findings of fact, including the inferences and conclusions drawn therefrom, must be sustained if supported by substantial evidence. United States v. LaLone, 152 F. 2d 43, 44 (C.A. 9); Mark v. Celebrezze, supra, 348 F. 2d

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11/ Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229.

at 293; McMullen v. Celebrezze, 335 F. 2d 811, 814 (C.A. 9), certiorari denied, 382 U.S. 854. And this Court has recognized that under the substantial evidence test resolution of conflicts in the evidence is for the Secretary. Galli v. Celebrezze, 339 F. 2d 924, 925 (C.A. 9).

2. The Standard of Disability.

Under the disability provisions of the Social Security Act, the claimant was obliged to show that on or before March 31, 1961 (the date of the expiration of his insured status under the Act) that he was unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months". (Emphasis added.) 42 U.S.C. (Supp. I) 423(c)(2), 416(i)(1).

In the Social Security Amendments of 1967, P. L. 90-248, 81 Stat. 921, Congress amended the definition of disability so as to make it very clear what kinds of physical or mental impairments satisfy the statute. Thus Section 158(b) [12/] of the Amendments provides, inter alia:

12/ The amendments contained in Section 158 of P. L. 90-248 apply to cases pending in court where "the decision in such civil action has not become final" before January of 1968. Section 158(c), 81 Stat. at 869. Thus these amendments apply to this case which is still pending in this Court. Dean v. Gardner, C.A. 9, No. 21,483, decided March 29, 1968, slip op. p. 3.

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

As this Court has already noted, "[t]he requirement in the amendment that the impairment be 'demonstrable by medically acceptable clinical and laboratory diagnostic techniques' serves to emphasize the need for objective medical evidence of disability." (Emphasis added.) Ryan v. Secretary of Health, Education and Welfare, C.A. 9, No. 21,672, decided April 9, 1968, slip op. p. 3, fn. 1. See also Steimer v. Gardner, C.A. 9, No. 21,550, decided May 14, 1968, slip op. p. 2. 13/

13/ This Court's interpretation is fully supported not only by the language of the statute but also by its legislative history. Thus the Report of the House Ways and Means Committee (H. Rept. No. 544, 90th Cong., 1st Sess.) states (p. 30):

* * * * *

The impairment which is the basis for the disability must result from anatomical, physiological, or psychological abnormalities which can be shown to exist through the use of medically acceptable clinical and laboratory diagnostic techniques. Statements of the applicant or conclusions by others with respect to the nature or extent of impairment or disability do not establish the existence of disability for purposes of social security benefits based on disability unless they are supported by clinical or laboratory findings or other medically acceptable evidence confirming such statements or conclusions.

* * * * *

It is clear, therefore, that claimant must have an impairment or impairments which are demonstrable by objective medical evidence and which are of a level of severity such as would preclude him from engaging in any substantial gainful activity. With respect to the requirement that claimant must be unable to engage in "any substantial gainful activity", the 1967 amendments added the following provision:

> (2) For purposes of paragraph (1)(A) --
>
> (A) an individual (except a widow, surviving divorced wife, or widower for purposes of section 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

The purpose of this provision was to make it clear that "[I]t is, and has been the intent of the statute to provide a definition of disability which can be applied with uniformity and consistency throughout the Nation, without regard to where a particular individual may reside, to local hiring practices or employer

preferences, or to the state of the local or national economy." H. Rept. No. 544, supra, at p. 30. [14]

Under the amended definition of disability, therefore, a person is not to be found disabled if (1) he can resume his former work or (2) if he can engage in any other kind of substantial gainful "work which exists in the national economy." [15] And the Secretary need not be concerned with whether in fact

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14/ The House Report also makes it clear that Social Security disability protection is more limited than other forms of insurance. The report states: "While such factors as whether the work he could do exists in his local area, or whether there are job openings, or whether he would or would not actually be hired may be pertinent in relation to other forms of protection, they may not be used as a basis for finding an individual to be disabled under this definition." H. Rept. 544, supra, at p. 30.

15/ The bill as it passed the House did not define the phrase "work which exists in the national economy", although the House Report made it clear that it was "not intended, . . . that a job which exists only in very limited numbers or in relatively few geographic locations would be considered as existing in the national economy." H. Rep't. No. 544, supra, p. 30. During the Senate debate, the amended definition of disability was deleted. 113 Cong. Rec., Nov. 17, 1967, S. 16, 746. In reinstating the amended definition, the Conference Committee added the phrase "For the purposes of the preceding sentence (with respect to any individual) work which exists in the national economy means work which exists in significant numbers either in the region where such individual lives or in several regions of the country."

The Conference Report (H. Rept. No. 1030, 90th Cong., 1st Sess., at p. 52 explains the new language as follows:

(Continued)

claimant would be hired for a particular job, but only whether the evidence supports a finding that claimant can perform the work.

3. The Secretary's Decision Is Supported By Substantial Evidence.

With the foregoing legal principles in mind, it is clear that the Secretary's determination that claimant was not disabled on or before March 31, 1961, has abundant support in the administrative record and must therefore be affirmed. The medical reports prepared for the Arizona Industrial Commission, Tr. 317, 323, 351, indicate no objective physical pathology to support claimant's subjective complaints of severe pain. And while Dr. Sitler at one time stated that he believed claimant had "two ruptured discs", and was "permanently and totally disabled" (Tr. 344-346), the same doctor was part of a group that examined claimant on April 17, 1962 (Tr. 353), and could find no new evidence to overturn the earlier finding that claimant suffered

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15/ (continued)

* * * * *

> The conference agreement contains substantially the provision of the House bill, but includes language designed to clarify the meaning of the phrase "work which exists in the national economy". This language puts into the statute the same meaning of the phrase that was expressed in the reports of both committees. Under the added language, "work which exists in the national economy" means work that exists in significant numbers in the region in which the individual lives or in several regions in the country. The purpose of so defining the phrase is to preclude from the disability determination consideration of a type or types of jobs that exist only in very limited number or in relatively few geographic locations in order to assure that an

rom a 10% general physical disability from his back impairments nd that claimant's myelogram was negative (See Tr. 334). And r. Sitler himself thought claimant might be able to work if he ould be trained in bench work.

In any event the Secretary was entitled to rely on the eports of the doctors who examined claimant for the Industrial ommission of Arizona and to determine that such medical evidence ogether with the other medical reports did not support a inding that the claimant was unable to engage in any substantial ainful activity. And as we noted above, the Secretary is equired under the Act to determine the existence of impairments n the basis of objective medical evidence. Where, as here, he medical evidence does not support claimant's repeated ssertions of disabling pain, the Secretary correctly resolved hat issue in favor of the heavy weight of the medical evidence.

Nor did the Secretary err in determining that claimant did ot have a disabling psychological impairment on or before arch 31, 1961. A psychiatric examination held on October 1959 howed that claimant "revealed no gross disorder of thinking", nd the claimant was "in good contact with the situation" (Tr. 333). n view of that report in 1959, the Secretary was not required o find a mental impairment in existence in 1961 because of a uggestion that claimant may have had, in 1966, chronic brain yndrome (Tr. 392). Rather the Secretary was clearly permitted o rely on the 1959 medical finding, which was closer in time to the period of claimant's insured status.

It is clear, therefore, that substantial evidence supports the Secretary's determination that claimant retained the residual mental and physical capacity to engage in light work.

Furthermore, the Secretary's determination that claimant could be a timekeeper, time checker, telephone order clerk, and dispatcher, and that he could engage in various bench-type jobs including instrument repair, etc. (Tr. 9) is fully supported by the testimony of the vocational expert, Dr. Daane (Tr. 227-242). The expert not only testified that these jobs could be performed by claimant, but that they (except perhaps for instrument-repair work) exist in the general economy, in the economy of the State of Arizona, and even near Phoenix (Tr. 231, 233). Moreover, in view of claimant's skill and ability as evidenced by his work history and testimony, the vocational expert and the Secretary were clearly entitled to conclude that claimant was equipped by experience and skill to handle these other light jobs. The Secretary was not, of course, obliged to determine whether claimant would be hired for those jobs or whether there were vacancies, or whether the jobs were available in his local community. Under the Act, as amended, the Secretary has to determine only whether claimant could perform any substantial work "which exists in the national economy". The Secretary's

etermination fully meets that standard, and is supported by
16/
oundant and substantial evidence.

CONCLUSION

For the foregoing reasons the judgment of the district
ourt should be affirmed.

Respectfully submitted,

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5/ As this Court noted in Dean v. Gardner, supra, slip op. 3, the 1967 amendments add a new provision which may change he burden of coming forward with vocational evidence. Section 58 provides, inter alia:

> (b)(5) **An individual shall not be considered to** be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require. (Emphasis added.)

n view of the ample vocational evidence adduced by the hearing xaminer, it is again unnecessary for the Court to reach the uestion of whether in fact the Secretary is required to make ny vocational showing.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

William Kanter

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AFFIDAVIT OF SERVICE

DISTRICT OF COLUMBIA)
) ss.
CITY OF WASHINGTON)

WILLIAM KANTER, being duly sworn, deposes and says:

That on June 5th, 1968, he caused three copies of the foregoing brief for appellee to be served by air mail, postage prepaid, upon counsel for appellant:

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WILLIAM KANTER
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Subscribed and sworn to before me
this 5th day of June, 1968.

Audrey Ann Crump
NOTARY PUBLIC

My Commission expires August 31, 1971.

A P P E N D I X

APPENDIX

42 U.S.C. (Supp. I) 416(i) provides in pertinent part:

(i) Disability; period of disability.

(1) Except for purposes of sections 402(d), 423 and 425 of this title, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, * * *

* * *

42 U.S.C. (Supp. I) 423 provides in pertinent part:

* * *

(c) Definitions.

For purposes of this section --

* * *

(2) The term "disability" means --

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

* * *

Section 158 of the Social Security Amendments of 67, P. L. 90-248, 81 Stat. 821, 867-869, provides in pertinent rt:

* * *

(b) Section 223 of such Act is further amended by adding at the end thereof the following new subsection:

"Definition of Disability"

* * *

(d)(1) The term "disability" means --

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

* * *

(2) For purposes of paragraph (1)(A) --

(A) an individual (except a widow, surviving divorced wife, or widower for purposes of section 202 (e) or (f) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

* * *

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

* * *

(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require.

* * *

(d) Section 216(i)(1) of such Act is amended by striking out the third sentence and inserting in lieu thereof the following: "The provisions of paragraphs (2)(A), (3), (4), and (5) of section 223(d) shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section.

(e) The amendments made by this section shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act, and for disability determinations under section 216(i) of such Act, filed --

(1) in or after the month in which this Act is enacted, or

(2) before the month in which this Act is enacted if the applicant has not died before such month and if --

(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act (whether before, in, or after such month) and the decision in such civil action has not become final before such month.